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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Indiana

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

There are three Indiana laws which pertain to advance directives - the Health Care Consent Act, the Living Will Act, and the Powers of Attorney Act. These laws may be used singly or in combination with each other. The following is a condensed version of each law:

Indiana Health Care Consent Act

Pursuant to IC 16-8-12, the Indiana Health Care Consent Act, a patient can appoint a **health care representative** to make decisions regarding the patient's medical treatments when the patient is no longer able. To appoint a health care representative, the patient must put it in writing, sign it, and have it witnessed by another adult. The patient determines in advance which medical treatments he/she will consent to or refuse, and the **health care representative** carries out the wishes of the patient.

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Indiana Living Will Act

Pursuant to IC 16-8-11, the Indiana Living Will Act, a patient may write one of two kinds of legal documents for use when a patient has a terminal condition and will be unable to give medical instructions. The first, the **Living Will Declaration**, is used if the patient wants to tell his/her doctor and family that certain life-prolonging medical treatments should not be used, so that the patient can be allowed to die naturally from the terminal condition. The second of these documents, the **Life-Prolonging Procedures Declaration**, can be used if the patient wants all possible life-prolonging medical treatments used to extend the patient's life.

For either of these documents to be effective, there must be two adult witnesses and the document must be in writing and signed by the patient or someone the patient directs to sign in the patient's presence. Either a **Living Will Declaration** or a **Life-Prolonging Procedures Declaration** can be canceled orally, or in writing, or by the patient canceling or destroying the declaration. The cancellation is effective, however, only when the patient's doctor is informed.

A copy of the Form of declaration is enclosed pursuant to IC 16-8-11-12.

IC 16-8-11-14(e) allows a physician to refuse to use, withhold, or withdraw life-prolonging procedures as a matter of conscience.

Indiana Powers of Attorney Act

IC 30-5, the Indiana Power of Attorney Act, defines how a patient can give someone the power to act for the patient in a myriad of situations, including health care. The person appointed by the patient does not have to be an attorney; however, the power of attorney must be in writing and signed in the presence of a notary public. The power of attorney must spell out who the patient wants as the patient's attorney **in fact** and exactly what powers the patient wants and does not want to give to the person who will be the attorney **in fact**. Since the attorney **in fact** is not required to act for the patient, if they choose not to, the patient may wish to consult with the person before making the appointment.

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(2) in writing;

(3) signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction;

(4) dated; and

(5) signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.

(c) A witness to a living will declaration under subsection (b)(5) may not be:

(1) the person who signed the declaration on behalf of and at the direction of the declarant;

(2) a parent, spouse, or child of the declarant;

(3) entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including whether the witness could take from the declarant's estate if the declarant's will is declared invalid; or

(4) directly financially responsible for the declarant's medical care.

For the purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

(d) The living will declaration of a person diagnosed as pregnant by the attending physician has no effect during the person's pregnancy.

(e) The life-prolonging procedures will declarant or the living will declarant shall notify the declarant's attending physician of the existence of the declaration. An attending physician who is so notified shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(f) A living will declaration under section 12 of this chapter:

(1) does not obligate the physician to use, withhold, or withdraw life-prolonging procedures but is presumptive evidence of the patient's desires concerning the use, withholding, or withdrawal of life-prolonging procedures under this chapter; and

(2) shall be given great weight by the physician in determining the intent of the patient now incompetent.

(g) A life-prolonging procedures will declaration under section 12 of this chapter does obligate the physician to use life-prolonging procedures as requested. *As added by P.L. 176-1985, SEC.1.*

16-8-11-12 Form of declaration

Sec. 12. (a) A declaration must be substantially in the form set forth in either subsection (b) or (c), but the declaration may include additional, specific directions. The invalidity of any additional, specific directions does not affect the validity of the declaration.

(b) The following is the living will declaration form:

LIVING WILL DECLARATION

Declaration made this ____ day of ____ (month, year). I, ____, being at least eighteen (18) years old and of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, and I declare:

If at any time I have an incurable injury, disease, or illness certified in writing to be a terminal condition by my attending physician, and my attending physician has determined that my death will occur within a short period of time, and the use of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the provision of appropriate nutrition and hydration and the

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administration of medication and the performance of any medical procedure necessary to provide me with comfort care or to alleviate pain.

In the absence of my ability to give directions regarding the use of life-prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of the refusal.

I understand the full import of this declaration.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate or directly financially responsible for the declarant's medical care. I am competent and at least eighteen (18) years old.

Witness _____ Date _____

Witness _____ Date _____

(c) The following is the life-prolonging procedures will declaration form:

LIFE-PROLONGING PROCEDURES DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years old and of sound mind, willfully and voluntarily make known my desire that if at any time I have an incurable injury, disease, or illness determined to be a terminal condition I request the use of life-prolonging procedures

that would extend my life. This includes appropriate nutrition and hydration, the administration of medication, and the performance of all other medical procedures necessary to extend my life, to provide comfort care, or to alleviate pain.

In the absence of my ability to give directions regarding the use of life-prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to request medical or surgical treatment and accept the consequences of the request.

I understand the full import of this declaration.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I am competent and at least eighteen (18) years old.

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.176-1985, SEC.1.

16-8-11-13 Revocation of living will declaration or life-prolonging procedures will declaration

Sec. 13. (a) A living will declaration or a life-prolonging procedures will declaration may be revoked at any time by the declarant by:

- (1) a signed, dated writing;
- (2) physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction; or
- (3) an oral expression of intent to revoke.

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